

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MAXINE WHITE,	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
FRONTIER AIRLINES, INC.,	§	
Defendant, Third Party	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. 16-CV-01266-
	§	AWA
	§	
THE AUSTIN FIRE DEPARTMENT,	§	
THE CITY OF AUSTIN AVIATION	§	
DEPARTMENT, AUSTIN-	§	
BERGSTROM INTERNATIONAL	§	
AIRPORT, THE CITY OF AUSTIN	§	
AND HUNTLEIGH USA	§	
CORPORATION	§	
Third-Party Defendants.	§	

**THIRD PARTY DEFENDANT CITY OF AUSTIN'S
SECOND AMENDED ORIGINAL ANSWER AND DEFENSES**

COMES NOW, Third Party Defendant City of Austin (which includes the improperly named Austin Fire Department, City of Austin Aviation Department and Austin Bergstrom International Airport) and files this Second Amended Original Answer and Defenses pursuant to the Federal Rules of Civil Procedure and would respectfully show this Court as follows:

A.

SECOND AMENDED ORIGINAL ANSWER

1. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 1 of Defendant/Third Party Plaintiff Frontier's Third Amended Third-Party Complaint.

2. Third Party Defendant City of Austin admits that Third Party Plaintiff asserts the complaints identified in Paragraph 2 of Defendant/Third Party Plaintiff Frontier's Third Amended

Third Party Complaint and that this Court can exercise supplemental jurisdiction over a third party complaint, but denies Third Party Plaintiff is entitled to such relief from this Defendant.

3. Third Party Defendant City of Austin admits the allegations contained in Paragraph 3 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

4. Third Party Defendant City of Austin admits the allegations contained in Paragraph 4 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

5. Third Party Defendant City of Austin denies that its governmental immunity has been waived and denies that airport activities are a proprietary function, as alleged in Paragraph 5 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

6. Third Party Defendant City of Austin denies that its governmental immunity has been waived and denies the remainder of the allegations contained in Paragraph 6 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

7. Third Party Defendant City of Austin denies that its governmental immunity has been waived and denies the remainder of the allegations contained in Paragraph 7 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

8. Third Party Defendant City of Austin denies that its governmental immunity has been waived and denies the remainder of the allegations contained Paragraph 8 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

9. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about the allegations contained in Paragraph 9 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

10. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 10 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

11. Third Party Defendant City of Austin admits allegations contained in Paragraph 11 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

12. Third Party Defendant City of Austin admits Third Party Plaintiff's allegations contained in Paragraph 12 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

13. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 13 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

14. Third Party Defendant City of Austin denies that Austin Fire Department, City of Austin Aviation Department or Austin Bergstrom International Airport are public and/or legal entities, and therefore denies that they have appeared and answered this action, as alleged in Paragraph 14 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

15. Third Party Defendant City of Austin denies the allegations contained in Paragraph 15 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

16. Third Party Defendant City of Austin admits that Plaintiff makes the allegations that are identified in Paragraph 16 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

17. Third Party Defendant City of Austin admits that Plaintiff makes the allegations that are identified in Paragraph 17 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

18. Third Party Defendant City of Austin admits that Plaintiff makes the allegations that are identified in Paragraph 18 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

19. Third Party Defendant City of Austin admits that Plaintiff makes the allegations that are identified in Paragraph 19 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

20. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in the first sentence of Paragraph 20 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint and the second sentence's allegation about what it has "reason to believe." The remainder of the allegations in this paragraph are too vague to admit or deny.

21. Third Party Defendant City of Austin admits the allegations contained in Paragraph 21 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

22. Third Party Defendant City of Austin admits the allegations contained in Paragraph 22 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

23. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 23 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

24. Third Party Defendant City of Austin admits the document identified states what it states, as alleged in Paragraph 24 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

25. Third Party Defendant City of Austin admits the document identified states what it states, as alleged in Paragraph 25 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

26. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 26 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

27. Third Party Defendant City of Austin admits the allegations contained in the first sentence of Paragraph 27 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint. It is without knowledge or information sufficient to form a belief about the remainder of the Paragraph as it is too vague and is a question of law.

28. Third Party Defendant City of Austin admits the allegations contained in Paragraph 28 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

29. Third Party Defendant City of Austin admits it responded to an open records request as alleged in Paragraph 29 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint. This Defendant is without knowledge or information sufficient to form a belief about the remainder of this paragraph.

30. Third Party Defendant City of Austin admits the document identified states what it states, as alleged in Paragraph 30 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

31. Third Party Defendant City of Austin admits the document identified states what it states, as alleged in Paragraph 31 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

32. Third Party Defendant City of Austin admits the document identified states what it states, as alleged in Paragraph 32 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

33. Third Party Defendant City of Austin denies the allegations contained in Paragraph 33 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

34. Third Party Defendant City of Austin denies the allegations contained in Paragraph 34 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

35. Third Party Defendant City of Austin denies the allegations contained in Paragraph 35 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

36. Third Party Defendant City of Austin denies the allegations contained in Paragraph 36 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

37. Third Party Defendant City of Austin denies the allegations contained in Paragraph 37 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

38. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 38 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

39. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 39 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

40. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 40 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

41. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 41 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

42. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 42 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

43. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 43 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

44. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 44 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

45. Third Party Defendant City of Austin denies the allegations contained in Paragraph 45 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

46. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 46 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

47. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 47 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

48. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 48 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

49. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 49 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

50. Third Party Defendant City of Austin admits the allegations contained in Paragraph 50 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

51. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 51 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

52. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 52 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

53. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 53 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

54. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 54 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

55. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 55 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

56. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 56 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

57. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 57 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

58. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 58 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

59. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 59 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

60. No information to admit or deny.

61. Third Party Defendant City of Austin denies the allegations contained in Paragraph 61 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

62. No information to admit or deny.

63. Third Party Defendant City of Austin denies the allegations contained in Paragraph 55 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

64. Third Party Defendant City of Austin admits Defendant/Third Party Plaintiff Frontier seeks the relief alleged in Paragraph 64 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint, but denies it is entitled to the same.

65. No information to admit or deny.

66. Third Party Defendant City of Austin denies the allegations contained in Paragraph 66 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

67. Third Party Defendant City of Austin denies the allegations contained in Paragraph 67 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

68. Third Party Defendant City of Austin denies the allegations contained in Paragraph 68 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

69. Third Party Defendant City of Austin denies the allegations contained in Paragraph 69 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

70. No information to admit or deny.

71. Third Party Defendant City of Austin denies the allegations contained in Paragraph 71 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

72. Third Party Defendant City of Austin denies the allegations contained in Paragraph 72 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

73. Third Party Defendant City of Austin denies the allegations contained in Paragraph 73 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

74. No information to admit or deny.

75. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 75 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

76. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 76 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

77. No information to admit or deny.

78. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 78 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

79. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 79 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

80. No information to admit or deny.

81. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 81 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

82. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 82 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

83. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 83 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

84. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 84 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

85. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 85 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

86. No information to admit or deny.

87. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 87 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

88. Third Party Defendant City of Austin is without knowledge or information sufficient to form a belief about Third Party Plaintiff's allegations contained in Paragraph 88 of Defendant/Third Party Plaintiff Frontier's Third Amended Third Party Complaint.

B.

AFFIRMATIVE AND OTHER DEFENSES

1. Third Party Defendant City of Austin affirmatively pleads that Third Party Plaintiff's claims and requests for relief are barred in whole or in part by governmental sovereign immunity in that Defendant is a municipal corporation that was acting in the performance of its governmental functions during the relevant time period and therefore is entitled to immunity, save only to the extent of the partial waiver of same, and it hereby affirmatively pleads and asserts its claims to and defense of governmental immunity and the exemptions and exclusions of the Texas

Tort Claims Act. Tex. Civ. Prac. & Rem. Code Ann. § 101.001 et seq. To the extent Third Party Plaintiff asserts causes of action for which immunity is not waived, this Court lacks jurisdiction over the City of Austin.

2. Third Party Defendant City of Austin further asserts official immunity and/or derivative official immunity to the extent that any City employee involved was in the scope of employment, performing an official duty, responding to an emergency call, and acting with reasonable care when the accident took place.

3. Third Party Defendant City of Austin further asserts, should it be necessary, that Third Party Plaintiff failed to meet all conditions precedent to suit in that both Third Party Plaintiff and Plaintiff failed to provide timely notice as required by the Texas Tort Claims Act.

4. Answering further, should it be necessary, Third Party Defendant City of Austin affirmatively pleads the exemptions from liability contained in §§101.021, 101.0211, 101.0215, 101.022, 101.055, 101.056, and 101.101 of the Texas Civil Practice and Remedies Code.

5. Third Party Defendant City of Austin would show that its liability for the Texas law tort claims, if any, is limited to the amount recited in §§101.023 and 101.024 of the Texas Civil Practice and Remedies Code.

6. Upon trial of this suit, the jury should consider and apportion the responsibility of all parties, responsible third parties and settling parties, pursuant to the requirements of the TEXAS CIVIL PRACTICE & REMEDIES CODE.

WHEREFORE PREMISES CONSIDERED, Third Party Defendant City of Austin prays that this matter be set for trial with proper notice to all parties; and upon hearing, that judgment subsequently enter in favor of said Defendant; and for such other and further relief to which this Defendant may be justly entitled.

Respectfully submitted,

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By: /s/Joanna Lippman Salinas
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Attorneys for Defendant, *City of Austin*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Third-Party Defendant City of Austin's Second Amended Original Answer and Defenses** has been provided to the offices of:

Joel A. Levine
LAW OFFICE OF JOEL A. LEVINE, PLLC
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Patrick J. Comerford, Esq.
SMITH ROBERTSON, LLP
221 W. 6th Street, Suite 1100
Austin, Texas 78701

by Electronic Service, in accordance with the Federal Rules of Civil Procedure, on July 6, 2018.

/s/Joanna Lippman Salinas
Joanna Lippman Salinas